

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHNNIE STEWART,

Defendant.

ORDER

04-cr-191-bbc

Defendant Johnnie Stewart has filed a motion asking for permission to file a motion under the Fairness in Sentencing Act of 2009 and H.R. 3245, Fairness in Cocaine Sentencing Act of 2009. If enacted, these bills would eliminate certain increased penalties for cocaine. In his motion, defendant acknowledges that the bills have yet to become law but requests permission to file his motion now.

On December 9, 2008, defendant filed a motion under 28 U.S.C. § 3582 and Amendment 706 of the Sentencing Guidelines which reduces the disparity between the penalties for crack cocaine and those for powder cocaine. That motion was denied on February 11, 2009 as defendant was not eligible for such a reduction because his sentence was determined by his status as a career offender and not by drug quantity.

I decline to hold defendant's motion in abeyance until some outside event occurs. If legislation should be enacted and if it is made retroactive to cases in which sentences have been imposed, he will be free to re-file his motion, bring it up to date and tailor it to the specific provisions of the legislation.

ORDER

IT IS ORDERED that defendant Johnnie Stewart's motion for reduction of his sentence is DENIED as premature. His request to hold his motion in abeyance until legislation is enacted to further reduce the sentencing disparities between cocaine and cocaine base is DENIED as well.

Entered this 12th day of February, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge